Mr. BAUMAN. I yield to the gentleman from California.

Mr. DANIELSON. Mr. Speaker, there have been no amendments whatever, non-germane or otherwise, added by the Senate.

Mr. BAUMAN. Mr. Speaker, I thank the gentleman, and I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the Senate bill as follows:

S. 2403

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of Congress is given to the amendments to the New Hampshire-Vermont Interstate School Compact which have been agreed to by such States and are substantially as follows:

(1) amend article VII–G to read as follows:

"(G) STATE AID PROGRAMS.—As used in this paragraph the term 'initial aid' shall include New Hampshire and Vermont financial assistance with respect to a capital project, or the means of financing a capital project, which is available in connection with construction costs of a capital project or which is available at the time indebtedness is incurred to finance the project. Without limiting the generality of the foregoing definition, initial aid shall specifically include a New Hampshire state guarantee under RSA 195–B with respect to bonds or notes and Vermont construction aid under chapter 123 of 16 V.S.A. As used in this paragraph the term 'long-term aid' shall include New Hampshire and Vermont financial assistance which is payable periodically in relation to capital costs incurred by an interstate district. Without limiting the generality of the foregoing definition, long-term aid shall specifically include New Hampshire school building aid under RSA 198 and Vermont school building aid under chapter 123 of Title 16 V.S.A. For the purpose of applying for, receiving and expending initial aid and long-term aid an interstate district shall be deemed a native school district by each State, subject to the following provisions. When an interstate district has appropriated money for a capital project, the amount appropriated shall be divided into a New Hampshire share and a Vermont share in accordance with the capital expense apportionment formula in the articles of agreement as though the total amount appropriated for the project was a capital expense requiring apportionment in the year the appropriation is made. New Hampshire initial aid shall be available with respect to the amount of the New Hampshire share as though it were authorized indebtedness of a New Hampshire cooperative school district. In the case of a State guarantee of interstate district bonds or notes under RSA 195–B, the interstate district shall be eligible to apply for and receive an unconditional State guarantee with respect to an amount of its bonds or notes which does not exceed fifty percent of the amount of the New Hampshire share as determined above. Vermont initial aid shall be available with respect to the amount of the Vermont share as though it were funds voted by a Vermont school district. Payments of Vermont initial aid shall be made to the interstate district, and the amount of any borrowing authorized to meet the appropriation for the capital project shall be reduced accordingly. New Hampshire and Vermont long-term aid shall be payable to the interstate district. The amounts of long-term aid in each year shall be based on the New Hampshire and Vermont shares of the amount of indebtedness of the interstate district which is payable in that year and which has been apportioned in accordance with the capital expense apportionment formula in the articles of agreement. The New Hampshire aid shall be payable at the rate of forty-five percent, if there are three or less New Hampshire members in the interstate district, and otherwise it shall be payable as though the New Hampshire members were a New Hampshire cooperative school district. New Hampshire and Vermont long-term aid shall be deducted from the total capital expenses for the fiscal year in which the long-term aid is payable, and the balance of such expenses shall be apportioned among the member districts. Notwithstanding the foregoing provisions, New Hampshire and Vermont may at any time change their State school aid programs that are in existence when this compact takes effect and may establish new programs, and any legislation for these purposes may specify how such programs shall be applied with respect to interstate districts. Notwithstanding the foregoing, the respective amounts of New Hampshire and Vermont initial and long-term aid, with respect to a capital project of the Dresden School District for which indebtedness is authorized by a vote of the District after July 1, 1977, shall be initially determined for each year for each member district by the manner provided in this paragraph and the aid shall be paid to the Dresden School District, however, the amount of aid for those capital projects received by the Dresden School District on account of each member district shall be used by the District to reduce the sums which would otherwise be required to be raised by taxation within that member district.";

(2) insert the following at the end of article VII:

"(I) Notwithstanding paragraph (G) of this Article, initial and long-term aid may be allocated among the members of an interstate district other than the Dresden School District in the manner which is provided in the articles of agreement of that district, or if not therein provided, in the manner specified in paragraph (G) for all interstate districts other than the Dresden School District."; and

(3) amend Article IX to read as follows:

"ARTICLE IX

"AMENDMENTS TO ARTICLES OF AGREEMENT

"A. Amendments to the articles of agreement shall be adopted in the manner provided in the articles of agreement, and if no such provision is made in the articles of agreement then amendments shall be adopted by the affirmative vote of two-thirds of those present and voting at an interstate district meeting, except that:

"a. If the amendment proposes the addition of a new member district, the amendment shall be adopted in the same manner provided for the adoption of the original articles of agreement, provided that the planning committee shall consist of all of the members of the interstate district board of directors and all of the members of the school board of the proposed new member district or districts, and provided that the amendment shall be submitted to the voters of the interstate district, the affirmative vote of two-thirds of those present and voting at an interstate district meeting being required for approval of the amendment. The articles of agreement together with the proposed amendment shall then be submitted to the voters of the proposed new member district or districts, and an affirmative vote of a simple majority of those present and voting at each district meeting shall be required for approval of the amendment.

"b. No amendment to the articles of agreement may impair the rights of bond or note holders or the power of the interstate district to procure the means for their payment.

"c. Amendments to the articles of agreement of the Dresden School District shall be adopted in the following manner: (1) an amendment shall be initially approved upon the affirmative vote of a simple majority of those voters of the Dresden School District who are present and voting at a meeting called for such purpose, (2) the amendment initially approved by the voters of the Dresden School District shall become final and effective upon the expiration of thirty days after the date of that vote, unless a petition is duly filed within that thirty-day period and the amendment is subsequently not approved by the voters of a member district in accordance with the procedure specified in clause (3), (3) if a petition, valid under applicable State law, is filed before the expiration of that thirty-day period with the clerk of any school district which is a member of the Dresden School District, which petition requires the calling of a special meeting of that member district for the purpose of considering the approval of the amendment initially adopted by the voters of the Dresden School District, then the board of school directors of that member district shall thereupon call a special meeting of that district for that purpose, (4) if the amendment as initially approved by the voters of the Dresden School District is approved by more than forty percent of the voters present and voting at the meeting of each member district in which a petition was filed under this section, then the amendment as initially adopted shall become final and effective upon the vote of that member district last to vote. If the amendment as initially approved by the voters of the Dresden School District is not so approved by more than forty percent of the voters present and voting at the meeting of any one member district, then the amendment shall be null and void and of no effect.".

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

CONFERENCE REPORT ON S. 1566, FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978

Mr. BOLAND. Mr. Speaker, I call up the conference report on the Senate bill (S. 1566) to authorize electronic surveillance to obtain foreign intelligence information.

The Clerk read the title of the Senate bill.

(For conference report and statement, see proceedings of the House of October 5, 1978.)

The SPEAKER pro tempore. Under the rule previously adopted, the conference report is considered as having been read.

The gentleman from Massachusetts (Mr. BOLAND) will be recognized for 30 minutes, and the gentleman from Illinois (Mr. MCCLORY) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Massachusetts (Mr. BOLAND).

Mr. BOLAND. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the conference report on S. 1566 which the House managers bring back to the House is, in almost every respect, the House bill. After what at times seemed to threaten to be a deadlocked conference, the Senate receded and accepted the House language exempting certain sensitive surveillances from the warrant requirement. These surveil-

lances do not involve U.S. persons, and the language of both the bill and the statement of the managers has been clarified to reinforce that condition. Further, the Attorney General certifications, which authorized the surveillances, will be sealed and stored under security procedures determined by the Chief Justice, with the concurrence of the Attorney General, after consultation with the Director of Central Intelligence. This will safeguard the sensitive information they contain, as well as insure record accountability for these surveillances.

The conferees, Mr. Speaker, also debated long and hard on the provisions designating judges. We did so, with a clear indication from the intelligence agencies that the House verision simply made inadequate provision for the secrecy of the surveillances involved. This was because the amendment which eliminated the original special court in the House bill followed adoption of the McClory amendment in the Committee of the Whole. When the McClory amendment was later defeated by a separate vote in the House, restoring all the surveillances requiring judicial warrants the court provisions, adequate for the few warrant applications that could have been made under the McClory amendment, were now totally inadequate for the substantial number which would be necessary under the restored provisions of the bill.

Mr. Speaker, let me quote to the Members a letter of the Attorney General directed to all of the conferees:

> Whatever provision is finally adopted by the conferees to resolve this problem, it is essential that there be a small number of predesignated judges authorized to exercise nationwide jurisdiction under the act. Only in this way can the intelligence community be certain that appropriate security measures are followed with respect to the personnel and facilities involved in this sensitive area.

It was clear to the majority of the House conferees, from that letter, that some compromise version was necessary. The conferees discussed a half dozen different ways of selecting and appointing the judges who would act on warrant applications. Some were rejected because they exceeded the scope of the differences committed to conference. In the end, the conferees settled on a modified version of the Senate language, altered to guarantee geographic diversity in judge selection and discourage the possibility of judge shopping.

Mr. Speaker, the action of the House conferees in this matter was thoroughly consistent with the intent of the House. The so-called special court was struck in the House for two reasons enunciated by the author of the amendment, the gentleman from Pennslyvania (Mr. ERTEL).

First, he said there are no surveillances for a court to consider. They have all been eliminated by the McClory amendment. But that situation was reversed the next day, when the McClory amendment was defeated on a separate vote in the House.

Second, it was argued that concentrating all warrant applications in one location posed a security risk and that they should be dispersed throughout the Federal judicial system. Well, Admiral Turner, Director of Central Intelligence, Admiral Inman, the Director of the National Security Agency, Director Webster of the Federal Bureau of Investigation, and the Attorney General, as well, are unanimous in their rejection of that theory. Their desire is to have these applications considered in only one location.

Mr. Speaker, the House conferees have brought back a workable, responsible, and extremely important bill. This legislation is needed to make clear the authority of the intelligence agencies in collecting foreign intelligence information by means of electronic surveillance. It will protect the agents who must put the surveillances into operation. It will assure our people that this most intrusive but highly productive form of intelligence gathering is being conducted in a fashion that will preserve their privacy while protecting our Nation's security.

Mr. Speaker, this bill passed the Senate 95 to 1. It passed the House a month ago 246 to 128. The conference was adoped in the Senate on last Monday night by an overwhelming voice vote, with no dissenting voice vote.

Mr. Speaker, this bill is the recommendation of President Ford, Attorney General Levi, a recommendation of Attorney General Bell and President Carter. It is a bill that has been worked on for 3 years by the Committee on the Judiciary on the other side.

It has been worked on for many months—many months—by the Intelligence Committees of both House and Senate sides. This conference report deserves the support of this House.

Mr. Speaker, I yield such time as he may consume to the gentleman from Wisconsin (Mr. KASTENMEIER), from the Committee on the Judiciary which shares jurisdiction in this area.

Mr. KASTENMEIER. Mr. Speaker, it has now been over 6 years since the Supreme Court in the famous Kieth case cast a cloud over current warrantless procedures for foreign intelligence surveilance. In that landmark decision Mr. Justice Powell writing for the court, specifically invited Congress,

> To consider protective standards . . . which differ from those already prescribed for specified crimes in Title III (of the Omnibus Crime Control and Safe Streets Act of 1968). Different standards may be compatible with the Fourth Amendment if they are reasonable both in relation to the legitimate need of government for intelligence and the protected rights of our citizens.

Finally, after years of work by four congressional committees and two administrations, we have developed a bill which is supported by a unique historical consensus—supported by everyone from the FBI and CIA to the ACLU. I believe that it is imperative that this consensus not be allowed to disintegrate at this late hour.

The conference report before the House represents a fair compromise of the positions of the two bodies. Many hours of difficult negotiations went into the report, which like the House passed bill, reflects a fair balancing of civil liberties protections against national security concerns.

Mr. Speaker, this conference report deserves approval for the following reasons:

For the first time, the executive branch will be bound by statutory restrictions; no longer will a claim of inherent executive authority to conduct national security wiretapping be recognized. The rule of law will be brought to this practice.

For the first time, the law will require that a criminal standard for United States persons be met prior to approval of a national security wiretap on them.

For the first time, an objective third party, a Federal judge, will be required to review and approve applications for these taps, using explicit statutory standards.

For the first time, the law will require extensive minimization procedures for national security wiretaps, thus requiring that extraneous information which may be gathered incidental to a tap be destroyed.

For the first time congressional oversight of national security wiretapping procedures will be provided by law. I can personally attest to the difficulty congressional committees and subcommittees have had in getting accurate, detailed information on the activities of the intelligence community. This requirement will be an important, substantive safeguard against the blatant abuses that have occurred in the past.

Lastly, this legislation will provide an important precedent for the crucial charter legislation which the Congress will be considering next year. I consider the bill before us today to be part of an ongoing effort to return the rule of law and the resultant public respect to the Nation's intelligence community.

As chairman of the Subcommittee on Courts, I believe that a word about the conference resolution of the judicial review procedures set forth in the conference report is in order.

The House adopted an amendment by the gentleman from Pennsylvania which would have required that all warrant applications be made to the U.S. district court for the geographical district in which the surveillance was to take place.

While I personally argued forcefully in conference for a court jurisdiction provision which would have reflected closely the House amendment, I was unable to persuade the Senate conferees for two reasons.

First, the entire intelligence community, including the Directors of the CIA, NSA, and FBI strongly opposed the House amendment. They argued that the inability of the Govenrment to make secure widely dispersed court facilities and numerous personnel would have made highly secret information potentially available to hostile foreign intelligence services. This was particularly persuasive with the conferees due to the fact that a major justification for the amendment of the gentleman from Pennsylvania was that it would offer more security against inflation by hostile intelligence agencies.

Secondly, the Ertel amendment was adopted at a point in the debate at which the House had accepted an amendment limiting the warrant procedure only to U.S. persons. This limitation was removed later in the debate. Had the warrant procedure applied only to that handful of wiretaps against U.S. persons there would have been a much more persuasive argument that ordinary courts, schooled in criminal warrant procedures, should bear the responsibility for receiving applications under the bill. However, as finally passed, the House bill extended this warrant requirement to foreign agents who are not U.S. persons. The intelligence community argued to the conferees that this requried a judicial review process carried out by judges who, although experienced in general judicial procedures, were able to have the benefit of special study in the area of foreign affairs and foreign intelligence gathering. Such knowledge would not be available to judges generally without risks of compromise of national security.

Mr. Speaker, we have labored to persuade the Senate to accept the House bill and have met with great success as can be seen by the fact that the basic text before us today is that of the House-passed bill. However, since the other body enacted its bill by a margin of 95 to 1, compromise in the committee on conference was an obvious necessity. The compromise agreed to more than adequately reflects the House bill and enjoys the vigorous support of those involved in our Nation's intelligence-gathering effort as well as civil libertarians. I strongly urge approval of the conference report without further delay.

Mr. BUTLER. Mr. Speaker, will the gentleman yield for a question?

Mr. KASTENMEIER. I yield to the gentleman from Virginia.

Mr. BUTLER. Mr. Speaker, the gentleman from Massachusetts and the gentleman from Wisconsin have discussed what took place in the conference. We spent 1½ hours on the floor debating an amendment which I offered and we compromised it with the insertion of the language "exclusive statutory" provision with reference to the procedures contained in this bill for conducting foreign electronic surveillance. I wonder if the gentleman can tell us what happened on that?

Mr. KASTENMEIER. Mr. Speaker, as the gentleman knows, the Senate provided no such term as "statutory." The House did agree—and I agreed as one Member of the House—to accept the word "statutory" without really very much debate as to what "statutory" meant. The 1½ hours of House debate which preceded that went to somewhat different language.

The Senate insisted that the word "statutory" be deleted. There is a full explanation on page 35 of the conference report, in which it states accurately and fairly:

> The conferees agree that the establishment by this act of exclusive means by which the President may conduct electronic surveillance does not foreclose a different decision by the Supreme Court. The intent of the conferees is to apply the standard set forth in Justice Jackson's concurring opinion in the Steel Seizure Case: "When a President takes measures incompatible with the express or implied will of Congress, his power is at the lowest ebb, for then he can rely only upon his own Constitutional power minus any Constitutional power of Congress over the matter.

That essentially states the view of the conferees. Nothing the gentleman or I can say will alter any constitutional power the President may have. However, we should not in fact, allocate any authority, statutory or otherwise, that the House may express by virtue of this law.

Mr. BUTLER. I thank the gentleman.

Mr. BOLAND. Mr. Speaker, will the gentleman yield?

Mr. KASTENMEIER. I yield to the gentleman from Massachusetts.

Mr. BOLAND. Mr. Speaker, if I may add to what the gentleman from Wisconsin has said, if there is one point the Senate was not going to agree on, it was on this point. When the Senate insisted on the deletion of the word "statutory", we had actually no choice in the matter.

The SPEAKER pro tempore. The gentleman from Massachusetts (Mr. BOLAND) has 15 minutes remaining. The gentleman from Illinois, (Mr. McCLORY) is recognized for 30 minutes.

Mr. McCLORY. Mr. Speaker, I yield myself 5 minutes.

(Mr. McCLORY asked and was given permission to revise and extend his remarks.)

Mr. McCLORY. Mr. Speaker, at this stage it is particularly important for us to realize what we are doing and what we are not doing. We should be aware of what this conference report provides and we should note that only five of the eight House conferees even signed the conference report. It does not happen too often that Members refuse to sign a conference report, but that occurred here. And the reason is because the House conferees have lost on every point. We have had to give ground either completely or we have had provisions in the House bill diluted to the extent that they coincide with what the Senate wanted and not what the House wanted.

This is particularly true with regard to the discussion that has taken place here on the floor with relation to the constitutional authority of the President, which was the subject of an amendment offered by the gentleman from Virginia (Mr. BUTLER). After a long discussion during the debate on this measure an agreement was reached in which both sides agreed that, by using the expression "statutory", that is, "exclusive statutory remedy" that that would mean that the inherent constitutional power of the President was not being affected. But it is true that the Senate conferees insisted on eliminating the word "statutory." They insisted on that because, in effect, what they are endeavoring to do with regard to all of our intelligence agencies and with respect to all of the intelligence activities, is to transfer the power that is granted by the Constitution to the President of the United States, to the courts. And we should realize that. It is an attempt to amend the Constitution by a simple legislative enactment.

Something else on which the Senate conferees insisted and which is in direct opposition to what was done in the House is this:

We rejected by better than a 2-to-1 majority, the establishment of a special court, and yet the special court, by omitting the word "special" was reinstated.

So again, I say, we should be aware of what has happened.

We have given in on every point.

The conference report imposes a requirement to transmit a sealed request for electronic surveillance even with regard to communications between foreign powers. We have reinstated the court involvement, which again the Senate conferees insisted upon, and which we gave in on.

Admiral Inman and the NSA, did not want to have court involvement, but we have given them court involvement because when their activities are revealed in a sealed envelope, and you file it with the court, and we then provide means by which the envelope can be unsealed and exposed, we are betraying the support we gave to NSA in the House-passed bill.

Is that consistent with the position of the House? Is that consistent with what both sides of the Intelligence Committee agreed upon and insisted upon? No. It is in complete difiance of what we decided here in the House.

The chairman of the committee (Mr. BOLAND) spoke about the McClory amendment. We never got anywhere near the McClory amendment. In the Intelligence Committee we had a tie vote on that amendment but then we lost it here on the floor, in a separate vote, when we went back into the House. There has been much pressure to get out a bill, and that is what it came down to finally at the end of the conference, that we have got to have some bill, we have got to have some legislation.

I say do not be in a hurry to make a serious mistake like this.

We will have charter legislation in the next Congress.

Let me add this, the abuses of the intelligence agencies are not abuses occurring now, or that occurred last year, or even the year before. They are abuses that relate to a period beginning long years ago—and which no longer occur. As a matter of fact, the existing guidelines have not been the subject of abuse. Consequently it seems to me that what we should be doing here is to thoughtfully and carefully strengthen the intelligence agencies, to make them better insofar as our national security is concerned, and not to compromise our actions in order to reach an accommodation with the American Civil Liberties Union, or any other group which would, if it could, prohibit all clandestine activities of our intelligence agencies because they do not believe that they are needed. They would require court ordered warrants for electronic surveillance. Indeed, they want our investigative agencies to secure judicial warrants for the appointment of informants.

The SPEAKER pro tempore. The time of the gentleman from Illinois (Mr. McCLORY) has expired.

Mr. McCLORY. Mr. Speaker, I yield myself an additional half minute.

Mr. Speaker, I just want to finish this thought, and that is that we are really involved here with one big package. It is all one big package which we have before us today, foreign intelligence electronic surveillance.

However, we also will have before us next the question of whether we should report to the courts with regard to informants and disclose their names and identities to the courts so that they can be accessible. The Attorney General should himself know all about this because he is before a court right now where he is being compelled, under threat of contempt of court, to reveal the names of informants.

Imagine, Mr. Speaker, we have put ourselves into that same trap.

It would seem to me that one of the easiest ways to compromise the confidentiality with which the CIA and other intelligence agencies must operate is to require that a record be established and maintained in a special court.

Currently, as I said, it is a court which is endeavoring to require the Attorney General to disclose the identity of informants who have been employed by the FBI in connection with intelligence-gathering activties.

It is through a court proceeding initiated by the American Civil Liberties Union that a U.S. district court is endeavoring to identify individuals employed by a Chicago Department of Investigation, who infiltrated a radical group aimed at disrupting the Democratic National Convention in 1968.

Clearly, to identify informants is to virtually destroy this technique which, as the Director of the FBI has declared, serves as the key to antiterrorist and criminal investigations.

While it may be the aim of the ACLU and others to destroy this technique, and to eliminate informants from infiltrating organizations suspected of criminal, terrorist, or other types of antisocial or revolutionary activtity, it should certainly not be the purpose of this legislation to give substance or support to such destructive efforts.

Yet, to impose upon the intelligence agencies a requirement to secure permission of a special court before undertaking national security intelligence-gathering activities either by way of electronic surveillance—or by the use of informants—is in effect to destroy any and all clandestine information-gathering activities—which are the key to criminal and national security intelligence gathering.

The House conferees have, in my view, failed to sustain the House position on virtually all counts. The exemption which was specifically granted by the action of the House Intelligence Committee so that no court proceeding or warrant requirement would be imposed where an electronic surveillance was sought for communications between foreign powers—was amended and significantly diluted.

The conference report imposes a requirement to transmit a sealed request for such electronic surveillance to the Chief Justice which, under some circumstances, may be unsealed.

In effect, the security which the Intelligence Committee felt was essential with regard to this extremely sensitive type of electronic surveillance was sacrificed by permitting a subsequent court proceeding to expose the electronic surveillance project for which the Attorney General has given his approval.

The House acted also to exempt the Executive from the court requirement with regard to securing foreign intelligence information in time of war declared by the Congress. No one seems to question the responsibility of the President to protect our national security in time of war. Thus, the House wisely recognized the constitutional authority and responsibility of the President in a wartime situation.

The conferees all but obliterated this exemption by substituting language which exempts the President from a warrant requirement for a period of just 15 days. Thereafter, all of the court proceedings and other requirements—including the possible appeals—are applicable in wartime just as they are in peacetime.

An extremely vital decision made in the House was the adoption of an amendment, offered by the gentleman from Virginia (Mr. BUTLER). After more than 1½ hours of debate on the amendment, compromise language was offered—and agreed to—making the bill the "exclusive statutory means" by which "electronic surveillance" may be conducted. This served to recognize the power which the Constitution vests in the President to engage in foreign intelligence gathering so as to protect our nation from foreign aggression. Sadly—and reprehensibly—this amendment was summarily dismissed in conference.

Finally, the conferees were in a serious dilemma with regard to the Ertel amendment which eliminated the entire "Special Court" provision for hearing warrant applications for national security electronic surveillance. After all, this amendment was adopted by a better than 2-to-1 margin. A patchwork provision to create a special court with judges from seven judicial circuits named by the Chief Justice of the U.S. Supreme Court found its way into the conference report. While there seemed to be a lack of agreement on this provision, the conferees acted almost in desperation with the argument that it was essential to produce some bill in this Congress on the subject of foreign intelligence electronic surveillance.

May I suggest that this is perhaps the major defect in the action which the conferees have recommended; namely, that it is essential to enact "some bill" in this Congress. In my view, "some bill" means even a bad bill and that is precisely what I feel the conferees have produced. This so-called carefully crafted legislation on the subject of foreign intelligence electronic surveillance is a modified accommodation to those who oppose all electronic surveillance plus those who feel that no national security intelligence gathering should be undertaken except upon the issuance of a court order—and this includes electronic surveillance, the securing of intelligence information through informants, and every other type of clandestine intelligence gathering activiites which are essential in the work of our intelligence agencies.

As I have maintained throughout the hearings and proceedings involving this subject, I feel strongly that legislation should be designed which will translate into statutory form the carefully drafted guidelines promulgated by former President Ford and later by President Carter. To substitute this confusing and constitutionally suspect legislation for an existing system with which the intelligence agencies have fully complied—and which has served to protect the privacy interests of our American citizens—is to commit an error which is both dangerous and possibly irreparable.

I hope that the conference report will be rejected and that the new Congress will have an opportunity to produce a sound and thoughtfully considered measure of which this body and this nation may be proud.

Mr. Speaker, in addition to the other arguments which have been presented in opposition to the conference report on the foreign intelligence surveillance measure, I wish to call attention to a recent editorial of station WOR-TV, New York City (channel 9), an independent station owned by RKO. The editorial expressed by the station's announcer, Mr. Herb Stupp, is entitled "A Delicate Balance" and is as follows:

A DELICATE BALANCE

Part of the aftershock of Watergate has been a drive to make the intelligence agencies accountable. The dilemma is how to balance civil liberties with serious national security needs. A bill called the foreign intelligence surveillance act tries to do just that.

The bill would create a special court in Washington. Before the CIA could eavesdrop on a suspected foreign agent, it would first have to obtain a warrant from this court. We like the idea of protecting liberty and privacy, but parts of the bill are dangerously impractical.

For instance, if the CIA wanted to intercept information going from one Soviet agent to another, it would first have to obtain a court order!

Another consideration is that by bringing foreign intelligence into the courts for the first time, we would be widening the circle of people with access to sensitive information. That includes judges, clerks, bailiffs, and other staff.

This is bound to mean leaks which would jeopardize our security.

Congressman McClory of Illinois has offered some amendments that make sense. He would require a warrant only for surveilling U.S. citizens and permanent residents. He would totally eliminate the warrant requirement for eavesdropping on foreign powers.

According to a study by the Heritage Foundation, terrorism is likely to increase in the United States. So while it is important to safeguard civil liberties, this is no time to hamstring our intelligence community.

We could support the foreign intelligence surveillance act, but only with the McClory amendments.

And that's our opinion. I'm Herb Stupp.

Mr. Speaker, I yield 4 minutes to the gentleman from California (Mr. WIGGINS).

(Mr. WIGGINS asked and was given

permission to revise and extend his remarks.)

Mr. WIGGINS. Mr. Speaker, we are, indeed, under considerable pressure to legislate in this area; but I hope we will not yield to that pressure if the price of doing so is to compromise settled constitutional principles.

The gentleman from Illinois (Mr. McCLORY) touched on the subject. It has been the subject of debate here, but it needs to be repeated.

Central to this whole scheme of review of national security wiretaps is that a court, in the dead of night, upon application of the executive branch, will affect the rights of third parties without giving them the slightest notice of what it is doing. Furthermore, it is not intended that the third parties whose rights are affected, will ever receive notice. Indeed, if there was the slightest suspicion that the target of electronic surveillance would get wind of what the executive branch proposed to do in collusion with the judicial branch, the whole exercise would stop.

Mr. Speaker, can the Members not see that? Can we not see what we are doing to the Federal judiciary? We are involving them in a wholly ex parte determination, in a secret plan between the Justice Department and the judiciary, without involving the third party whose interest is affected.

That is not a case or controversy because it fails in the essential ingredient of an article III case or controversy. There is no adversary relationship before the court between the real parties in interest.

Mr. Speaker, we cannot approve this bill, even under pressure, if we are faithful to the Constitution, in my opinion. What would happen if we could rise above this current pressure and vote this conference report down?

The executive branch, which is the alleged perpetrator of all of this improper surveillance, supports the legislation. It is not going to view a rejection of the conference report as some license to violate the personal liberties of those in this country. I have confidence that the President and the Department of Justice will not conduct a rampage of surveillance if this conference report is voted down.

There is ample time in the next Congress to give more sensitive consideration to a fundamental constitutional principle.

Mr. Speaker, we accepted the argument I have made once after full debate; but after intensive pressure and, I suppose, upon further reflection, too, when a separate vote was called upon this issue in the House, the Members changed their mind. I accept that precedent. Let us change it again. We were right the first time. Let us reverse our position again and let this matter percolate a bit longer. The issues involved are far too fundamental for us to legislate in haste.

Mr. MAZZOLI. Mr. Speaker, will the gentleman yield?

Mr. WIGGINS. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. I thank the gentleman for yielding.

Let me first say that this is one of the last appearances of the gentleman in the well before the House, and as one who has been assisted many times by his observations on matters before our committee and on the floor, I want to wish him well in the years ahead.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. McCLORY. Mr. Speaker, I yield 2 minutes to the gentleman from Virginia (Mr. ROBINSON).

(Mr. ROBINSON asked and was given permission to revise and extend his remarks.)

Mr. ROBINSON. I thank the gentleman for yielding.

Mr. Speaker, I rise in opposition to the conference report. Frankly, I find this to be a poor piece of legislation—all the more so in its timing.

While I opposed this measure when it was first considered in the House, upon final passage of the bill I had hoped that the amendments which were adopted during floor consideration would be substantially maintained in conference. But, to my dismay, not one of these amendments was maintained. Let me repeat that—every single change made on the House floor was substantially undone in conference.

I understand that the very nature of the conference between the two Houses must be one of compromise, but compromise is a two-way street, and I do not see that the Senate traveled the road at all. And, let me note that the provisions rejected by the conferees were contained in amendments not only adopted by voice vote, but in one instance adopted by a vote of 224 to 103—that is more than a 2-to-1 majority. Therefore, as I see it, even putting aside for the moment the substance of the conference report, I believe that it should be rejected simply on the grounds of the short shrift given the clearly expressed position of the House.

The conference report also presents numerous reasons for a "no" vote on the merits. For, while it extends fourth amendment, privacy protections to foreigners engaged in espionage in the United States, it thereby denies the President his constitutionally vested power to gather intelligence in order to protect our country from foreign aggression.

Finally, as I have already noted, consideration of this piece of legislation at this time presents a good example of bad timing. Currently pending in Congress is a bill entitled the "National Intelligence Reorganization and Reform Act." This bill would not only establish general guidelines for the activities of our intelligence agencies, but would also set out specific charters for each one of these agencies. It should be further understood that the bill we are considering today makes up one part of the Reorganization Act. It seems to me that legislation regulating foreign intelligence electronic surveillance would better be considered in an omnibus bill rather than, as we are doing today, on a piecemeal basis.

Mr. Speaker, I urge my colleagues to vote "no" on the conference report.

Mr. McCLORY. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from California (Mr. BOB WILSON), the ranking member of the permanent Select Committee on Intelligence.

(Mr. BOB WILSON asked and was given permission to revise and extend his remarks.)

Mr. BOB WILSON. Mr. Speaker, I rise in opposition to the conference report to S. 1566, the Foreign Intelligence Surveillance Act of 1978. I have great respect for my distinguished chairman and the subcommittee members. I did not sign the conference report because in considering this legislation I find a number of things which bother me.

I am bothered by the fact that an amendment adopted by the House after more than an hour and a half of debate—an amendment recognizing the constitutional power of the President to protect our national security—was totally rejected by the conferees.

I am bothered by the fact that a time of war exemption from the bill's warrant requirements adopted in the House was gutted in conference.

I am bothered by the fact that the conferees completely rejected an amendment striking from the bill a provision establishing "Special Courts"—despite the fact that this amendment had been adopted by more than a 2-to-1 majority in the House.

Mr. Speaker, what bothers me most of all is the fact that this piece of legislation is before the House at all at this time. It may be trite, but it is true: passing this bill now will be an act of putting the cart before the horse.

Currently pending in Congress is the National Intelligence Reorganization and Reform Act. This piece of legislation—which some refer to as the intelligence agency's "Charter Bill" will be the center of attention in the Intelligence agencies, as well as establish a framework for the conduct of intelligence activities.

While much of the bill establishes a general framework for intelligence activities, title III, part B, encompasses the very legislation which is before us today.

While I seriously question a number of provisions in the charter bill, I believe that the omnibus approach is the best way to go. I find it totally inadvisable to enact legislation aimed in only one area of foreign intelligence gathering before we have established, general statutory guidelines for all intelligence activities.

Mr. Speaker, I ask my colleagues to consider the following. currently we are operating under President Carter's Executive order which all available evidence indicates is doing the job—it is protecting reasonable privacy interests and regulating intelligence collection. Indeed, all of the testimony before the Intelligence Committee has shown the present situation to be abuse-free. Therefore, we can continue to operate effectively without this legislation, and it certainly would be preferable to consider it as part of general, intelligence agency reorganization legislation.

Mr. Speaker, I urge my colleagues to vote "no" on the conference report.

Mr. McCLORY. Mr. Speaker, I yield 3 minutes to the gentleman from Ohio

(Mr. ASHBROOK), a member of the committee.

Mr. ASHBROOK. Mr. Speaker, I thank my colleague for yielding.

Mr. Speaker, this was a bad bill when it came before us on September 7. After the changes made by the conference committee, it is now considerably worse. In every case the conference decisions make it more difficult to surveil a foreign intelligence agent or terrorist.

In discussing an earlier state of this legislation in 1976, even Vice President MONDALE, then a Senator said:

> As far as I am concerned, foreign spies in this country should have no rights. Probably that is a little crudely put, but a KBG agent and so on—I shouldn't say it—I could care less how we proceed to get information from them or influence their behavior while they are in this country. What I am worried about is the application of these activities and their effect on American citizens. That is what I am talking about. (Testimony before the Senate Intelligence Committee, June 29, 1976, p. 69.).

This bill goes far beyond what even Vice President MONDALE advocated. It, in fact, grants fourth amendment privileges to foreign intelligence agents.

A few months ago, the CIA provided the House Intelligence Committee with an unclassified report on Soviet and KGB manipulation of the media. That report which was prepared at my request, covered among other matters the role of the International Communist Fronts such as the so-called World Peace Council which a few years ago gave its "peace prize" to the PLO terrorist leader Arafat.

According to the CIA, the gatherings of the international fronts:

> Serve as agent enlisting grounds for Soviet and bloc intelligence services. Front meetings in the USSR and Eastern Europe are ideal for this purpose because bloc intelligence officers can control the circumstances of their meetings with likely recruits, with no fear of surveillance by or interference from non-Communist security services. Most of the agents enlisted by Communist bloc intelligence services over the years were targeted while on visits to the Soviet bloc, some while in attendance at front meetings or on free vacations in the bloc offered in connection with these gatherings.

As a result of a conference change in definition of an "agent of a foreign power" members of foreign Communist Parties or of the international Communist fronts could not be electronically surveilled. Officers or employees could—but not members. The FBI would have to prove to a judge that the individual member was engaged in or preparing to engage in a criminal act.

This is a "Catch 22." How can the FBI know if a crime is being prepared without some surveillance?

The conference left "member" in the definition of an "international terrorist group." But even this is inadequate. For example, this administration refuses to designate the Palestine Liberation Organization as a terrorist group. I understand the diplomatic problems in this area. But under this bill as written, members or the PLO, other than officers or employees could not be surveilled, even with a warrant, unless we already know that they are planning a specific terrorist act, a specific crime. This is a criminal standard for surveillance of even terrorists and spies.

I would like to inform my colleagues that minority staffers were barred from all but one of the informal conference staff meetings. At the one meeting that a minority staffer was allowed to attend, there was an ACLU official present as well.

Mr. Speaker, this bill represents a total capitulation to the Senator from Massachusetts (Mr. KENNEDY) and his erstwhile staffers and assorted outside advisers of the ACLU and Morton Halperin ilk. It is a disaster we will live to regret. It is a victory for the anti-intelligence forces in our country, certainly not for the American people or our intelligence gathering men and women.

I urge that we vote down this conference report. We will have the opportunity to reconsider this matter as part of Charter Legislation next session. That is the appropriate time to consider this. I ask my colleagues to vote "no."

Mr. McCLORY. Mr. Speaker, will the gentleman yield?

Mr. ASHBROOK. I am glad to yield to my colleague, the gentleman from Illinois.

Mr. McCLORY. Mr. Speaker, on the subject of the PLO, I think it is important to point out that a warrant would be required in order to engage in electronic surveillance of the PLO.

As the gentleman stated, we have in the PLO a foreign power which is operating here in this country, and yet we would be deprived of the opportunity to get information by electronic surveillance from the PLO unless a court decides this can be done. That is what most intelligence is, that is, information which we should be able to secure without going to a court and applying for a warrant and then permitting the court to decide whether or not we can or cannot engage in electronic surveillance. It seems to me this is certainly inimical to our country's national security.

Mr. ASHBROOK. Mr. Speaker, my colleague, the gentleman from Illinois, is certainly right. If that sad day ever comes when terrorist acts expand in this country, I am sure the same Members who are voting today for this conference report will be rushing in to undo the damage that is being done now.

Mr. LIVINGSTON. Mr. Speaker, will the gentleman yield?

Mr. ASHBROOK. I yield to the gentleman from Louisiana.

(Mr. LIVINGSTON asked and was given permission to revise and extend his remarks.)

Mr. LIVINGSTON. Mr. Speaker, I applaud the position being taken by my colleague, the gentleman from Ohio (Mr. ASHBROOK), and I wish to associate myself with his remarks.

Mr. MURPHY of Illinois. Mr. Speaker, I yield myself such time as I may consume.

(Mr. MURPHY of Illinois asked and was given permission to revise and extend his remarks.)

Mr. MURPHY of Illinois. Mr. Speaker, the conference report we bring back to the House today promises a new era for our Nation's intelligence agencies. The compromise we have reached with the Senate also represents a pact we have struck with the U.S. intelligence community. They—as well as the Congress—have recognized that their activities must bear the clear imprimatur of lawful authority. They—as well as the Congress—want to know clearly what they should do and what they should not do. They—as well as the Congress—want the American people to have confidence that intelligence agencies are directing their activities at spies or terrorists or foreign powers—and not on Americans. This conference report helps assure that—where electronic surveillance is concerned—these goals have been met. I cannot emphasize too strongly that the provisions of the bill which we bring back to this body were worked out—at every stage—in cooperation with the intelligence agencies and not depsite them. I believe the Congress—and the House in particular—can be proud of the new atmosphere of trust and cooperation between Congress and the intelligence community that S. 1566 represents.

The conference report itself closely resembles the bill which the House passed last month. In particular, the bill retains the House language which provides that certain sensitive surveillances of foreign powers—which do not involve the communications of U.S. persons—may be authorized without a judicial warrant. The conference report adds clarifying language on this point and requires transmission and storage of the sealed Attorney General authorizations under security procedures approved by the Chief Justice and the Attorney General.

Mr. Speaker, perhaps an important issue in conference, and one which has stirred controvery, concerns how the judges designated to hear warrant applications under the bill are chosen. There was a wide ranging debate in the conference committee on the method of selection. The conference substitute, quite frankly, came down in favor of the Senate language but with a change to insure a geographically diverse selection. Both the House and the Senate conferees decided on the arrangement the House did—seven judges with nationwide jurisdiction chosen by the Chief Justice, who rotate in pairs into the District of Columbia and operate under strict and comprehensive security provisions—because of the immediate and strong concern exhibited by both the Attorney General and the heads of the intelligence agencies. These officials requested a court of this description that met in this city in order to properly safeguard the sensitive intelligence information that will be the subject of warrant applications. The conferees otherwise provided for a diverse selection of judges and acted to prevent judge shopping. When the judges chosen under the bill are not hearing warrant applications, they will be assigned to other judicial duties.

Mr. Speaker, in large part the remainder of the conference report is the House bill. The Senate agreed to the House format, its definition of international terrorism, minimization procedures and retained the authorization in time of war. The Senate conferees, in sum, accepted the House provisions in

nearly every case. They did so, however, because they wanted a strong bill—one that protects vital intelligence operations while preserving the privacy rights of our citizens. They passed the measure earlier this week—by a voice vote—in a similar spirit. I believe that the House should exhibit similar strong support for this bill. It is reasonable, it is workable and it is sorely needed by our intelligence agencies.

Let me close by establishing that point beyond any doubt. Let me read you the letters of Admiral Turner, Director of Central Intelligence, Admiral Inman, Director of the National Security Agency, and Director Webster of the Federal Bureau of Investigation.

This is the letter from Stansfield Turner, the Director of Central Intelligence:

WASHINGTON, D.C.,
October 11, 1978.

HON. EDWARD BOLAND,
House Permanent Select Committee on Intelligence, House of Representatives, Washington, D.C.

DEAR CHAIRMAN BOLANDS I am informed that the conference report on the Foreign Intelligence Act of 1978 is scheduled for consideration on the floor of the House of Representatives in the near future. The purpose of this letter is to assure that this legislation, as it emerged from the conference, continues to have my full and unqualified support as head of the Intelligence Community.

From a security perspective, I am particularly gratified that the conference committee chose to include specific statutory language dealing with security measures in court proceedings and with a centralized court system to consider applications for warrants. The House version of this legislation, as amended on the floor, had not contained such language. The new provisions facilitate the implementation of specific security measures and reduce the opportunity for compromise of sensitive security information. These advantages far outweigh any benefits which might accrue from dispersing warrant applications around the country.

For these and many other reasons, I strongly urge that the House of Representatives approve the conference version of this legislation.

Yours sincerely,

STANSFIELD TURNER.

The letter from Admiral Inman, Director, National Security Agency and Chief of the Central Security Service, is as follows:

FORT GEORGE G. MEADE, MD.,
October 11, 1978.

HON. EDWARD P. BOLAND,
Chairman, Permanent Select Committee on Intelligence, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: I wish to reiterate my strong support for the Foreign Intelligence Surveillance Act as reported by the House-Senate Conference.

I am particularly pleased by the provisions adopted by the Conference on the court that will hear applications for authorization to conduct electronic surveillance. Limiting the number of judges to seven and providing (in the Conference Report) that the court shall sit in the District of Columbia will contribute materially to ensuring proper security.

Sincerely,

B. R. INMAN,
Vice Admiral, U.S. Navy,
Director, NSA/Chief, CSS.

The letter from William H. Webster, Director, Federal Bureau of Investigation, is as follows:

WASHINGTON, D.C.,
October 11, 1978.

HON. EDWARD P. BOLAND,
Chairman, Permanent Select Committee on Intelligence, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: I have been requested to provide my views on the result of the Conference Committee's resolution of the relatively minor differences between the House and Senate versions of the Foreign Intelligence Surveillance Act. As you know, the FBI has strongly supported enactment of this legislation and worked for passage of both versions.

On the whole, the FBI favored H.R. 7308 as passed by the House on September 7, 1978. However, I was particularly concerned with the manner in which the House version dealt with the designation and jurisdiction of judges authorized to grant electronic surveillance orders under the bill. As the Attorney General stated in his letter to the conferees of October 3, 1978:

"Particularly for counterintelligence investigations, the intelligence community cannot be faced with the situation, as now exists under the House bill, of having to travel across the country seeking a judge with jurisdiction to act in a particular locale. It would be both difficult to protect the security of the information and difficult to reach such a judge in time to act in an effective manner in urgent circumstances. Time is often of the essence and vital information might be lost in the time it would take to reach a judge. It is clearly preferable to have designated judges familiar with the Act available to act on an application so that we can protect civil liberties while at the same time insuring that vital information is not lost because of needless time delays or security concerns."

The Conference Report resolved this problem by centralizing a court in Washington with seven designated U.S. District Court judges selected from among the judicial circuits to exercise jurisdiction under the Act. I agree with the Attorney General that this result was essential to maintaining proper security for the sensitive information that will be provided to the court and will provide the FBI a forum that is accessible in a timely manner, both of which are vital to the conduct of our counterintelligence responsibilities. In short, the FBI is comfortable with the resolution of this issue.

I was also concerned that the House provision dealing with the surveillance of groups engaged in international terrorism be maintained in the Conference. The Conferees agreed with the House that this was an important difference between the bills and adopted the House version, which provides a broader basis for conducting electronic surveillance of groups engaged in international terrorism than did its Senate counterpart.

This legislation is important to the FBI. It makes clear that the FBI has legislative authority to conduct electronic surveillances in foreign counterintelligence operations and that our Agents will be protected in relying on judicial warrants for such purposes. The Conference Report satisfies these needs.

Sincerely yours,

WILLIAM H. WEBSTER,
Director.

Mr. Speaker, I say to my colleagues on the other side of the aisle that they cannot have it both ways. They cannot say we are impairing the security of this country, on the one hand, with this bill, and yet oppose the language of the bill on the other hand, which, as the intelligence agencies have told us, provides strict security. They cannot have it both ways. We have seven judges coming to the District of Columbia, and I know there are a number of Members on the other side of the aisle who have come to me privately and told me that they are with us on this provision, that they endorse strong security in the court created by the bill.

Mr. MIKVA. Mr. Speaker, will the gentleman yield?

Mr. MURPHY of Illinois. I yield to the gentleman from Illinois.

Mr. MIKVA. I thank the gentleman for yielding.

Mr. Speaker, I want to associate myself with the gentleman's remarks. I wish to commend the committee of conference for bringing forth what I think is a very workable solution to a very delicate set of problems. I intend to support the conference report.

Mr. MAZZOLI. Mr. Speaker, will the gentleman yield?

Mr. MURPHY of Illinois. I yield to the gentleman from Kentucky.

Mr. MAZZOLI. I thank the distinguished gentleman for yielding.

Mr. Speaker, I rise in support of the conference report to accompany S. 1566, the Foreign Intelligence Surveillance Act of 1978.

This important, complex, and much needed piece of legislation was first proposed by the Ford administration and Attorney General Levi in 1975. It is strongly supported by the current administration.

Further, in the 95th Congress four standing committees studied this bill. The House and Senate Judiciary Committees and the House and Senate Intelligence Committees each took testimony on this bill.

Mr. MURPHY of Illinois. I thank the gentleman for his comments.

I am privileged to be a member of both the Intelligence and Judiciary Committees in the House, because of this I can vouch that their hearings considered all points of view and involved all interested parties.

Drawing on this detailed record, and the lengthy debate on the House floor the conference committee lead by two distinguished gentlemen from Massachusetts, Mr. BOLAND and Senator KENNEDY produced a compromise product that is a very good bill.

This bill, embodied in the conference report now before the House, is a careful balance between our national security needs and the constitutional need to protect civil liberties. Also, this bill carefully protects the positions taken by both Houses in their work in committee and on the floor.

The major difference between the House and the Senate bills is that the House bill did not require a warrant for two especially sensitive activities while the Senate required a warrant in all cases. With only minor modifications this House provision was adopted by the conference committee.

The second major difference was the Senate's provision for a special court to hear applications for warrants. In a floor

amendment, the House gave this authority to regular Federal district courts. Because Admiral Turner, the Director of Central Intelligence, informed us that it was an unacceptable security risk to involve so many judges in so many locations, the House conferees accepted a compromise on this point.

Under the terms of this compromise, seven regular Federal district judges from seven of the 11 judicial circuits will be designated to hear these warrant applications at a secured location to be designated by the intelligence agencies.

Thus, the security concerns of our intelligence agencies will be met without reestablishing the special count to which the House objected.

Beyond the careful work done by our conference committee there are good and sound substantive reasons for supporting this bill.

First and foremost, our intelligence agencies and agents want this bill very badly. Intelligence agents need a warrant or formal certification to protect them from the uncertainties which they now suffer.

FBI Director Webster, CIA Director Turner, and NSA Chief Inman asked the intelligence committee for a strong bill to protect their agents and to legitimize their work. They believe that this bill will help restore morale in their agencies by removing the cloud of civil and criminal penalties which now hangs over their agents.

This bill will free these men to vigorously proceed to check the KGB and other foreign intelligence agencies in this country.

Contrary to the assertion of its opponents, this conference report does allow electronic surveillance of foreign embassies and spies. In those cases where the surveillance cannot take place on the certification of the Attorney General—and such a certification covers most such cases—the conference report simply requires the issuance of an easily obtained warrant to authorize such an electronic surveillance.

Because of the obvious importance to our national security of such taps, the bill greatly reduced the materials which the judge has to review before granting such a warrant, and the bill allows such taps to be installed before a warrant is obtained if an emergency arises.

The bill protects the civil liberties of all Americans and their law-abiding foreign guests. All too often in the past, taps on foreign embassies were used as a pretext to gather political information on Americans including Members of Congress and Supreme Court Justices.

This bill will forever close the door on such want or disregard for our privacy. In short, this bill enacts into law these two important national policies:

First. Our intelligence agencies will play an important role in resisting our enemies' efforts to spy in this country.

Second. An American citizen's precious "right to be left alone" will be respected under the law.

Affirmation of these policies today will be a long step toward restoring public confidence in and the morale of our intelligence agencies.

I strongly urge the adoption of the conference report.

Mr. McCLORY. Mr. Speaker, I yield 4 minutes to the gentleman from Virginia (Mr. BUTLER).

(Mr. BUTLER asked and was given permission to revise and extend his remarks.)

Mr. BUTLER. Mr. Speaker, I will just urge you to vote in opposition to the conference report. I would ask you to keep in mind that this very critical and sensitive issue has not received consideration by the Committee on the Judiciary. The conference got nothing for caving in on my amendment, even though it was a compromise quickly accepted on the House floor by the bills managers.

My premise, which was the basis for the amendment, dealt with the inherent constitutional power of the President of the United States, to engage in electronic foreign surveillance. I am satisfied from my reading of the Constitution and relevant cases that the President of the United States who has responsibility for our foreign policy, for our Armed Forces, and for our national security, has the inherent constitutional power, to engage in electronic foreign surveillance for security purposes.

What called my attention to the problems here was a colloquy between the gentleman from California (Mr. EDWARDS) and the gentleman from Wisconsin (Mr. KASTENMEIER).

Mr. EDWARDS said, "Is it clear that this bill eliminates the inherent power of the President to electronically surveil U.S. citizens without a warrant?"

Mr. KASTENMEIER replied, "In answer to the question of my colleague, I would say yes."

That was clearly the intention of this legislation when it left the House, and that is wrong. So, I offered an amendment which would affirmatively establish and say, "Yes, the President has that constitutional power," and after considerable debate we accepted—and I thought accepted on both sides—the series of words, "exclusive statutory means available." With my amendment the end result is that this act would constitute the exclusive statutory means and the constitutionally inherent power of the Executive would not be infringed upon or destroyed.

That amendment was quickly rejected, apparently, in the conference. I think that is basically wrong. This is what the conference report says:

> The conferees agree that the establishment by this act of exclusive means by which the President may conduct electronic surveillance, does not foreclose a different decision by the Supreme Court.

Now, that is really magnanimous. How arrogant can you get? We are not going to foreclose the Supreme Court from an act telling us what the Constitution is. But the Constitution is clear. We know what the law is. We know the President of the United States has this inherent power. We know it and the conferees know it. Every judicial circuit which has considered the issue have concluded that the President does in fact have this power.

The judicial warrant approach in the bill is premised on the proposition that the fourth amendment to the Constitution presumptively requires a warrant for every search. The underlying reasoning for this assertion is the Supreme Court's holding in the Keith case, where they ruled that a warrant is required for electronic surveillance employed for domestic security purposes. However, the warrant requirement in the Keith case was limited to domestic security cases, as the courts made it clear that they were in no way addressing the issues involved in foreign intelligence electronic surveillance.

Not only is there no existing case authority for vesting the Federal courts with jurisdiction to authorize or refuse to authorize foreign intelligence gathering activities as proposed in the conference substitute, but the U.S. Supreme Court has explicitly rejected such authority in *Chicago & Southern Air Lines Inc.* v. *Waterman Steamship Corp.*, 333 U.S. 103, 111 (1948) holding:

> . . . It would be intolerable that courts without the relevant information, should review and perhaps nullify actions of the Executive taken on information properly held secret. Nor can courts sit in camera in order to be taken into executive confidences. But even if courts could require full disclosure, the very nature of executive decisions as to foreign policy is political, not judicial. Such decisions are wholly confided by our Constitution to the political departments of the government, Executive and Legislative. They are delicate, complex, and involve large elements of prophecy. They are and should be undertaken only by those directly responsible to the people whose welfare they advance or imperil. They are decisions of a kind for which the Judiciary has neither aptitude, facilities nor responsibility and which has long been held to belong in the domain of political power not subject to judicial intrusion or inquiry.

Even the most recent espionage case *United States* v. *Humphrey and Troung*, (Crim. No. 78-25-A,E. D. Va., May 19, 1978), stated:

> It is not at all certain that a judicial officer, even an extremely well-informed one, would be in a position to evaluate the threat posed by certain actions undertaken on behalf of or in collaboration with a foreign state. . . . The Court is persuaded that an initial warrant requirement (for foreign intelligence electronic surveillance) would frustrate the President's ability to conduct foreign affairs in a manner that best protects the security of our Government.

What we have done, we have said to the President of the United States:

> You may have this power—under the Constitution, but you are going to exercise it at your peril. If you think a situation is going to ever arise where you think it is important to exercise this inherent constitutional power, you go ahead and do it, but you are taking a big chance because you are violating this statute.

That is not the way it should be. The President of the United States has inherent powers. We should recognize those inherent constitutional powers and not put him in a position where he exercises them at his peril. That is what this bill does. I think it hampers and hamstrings unnecessarily the intelligence community charged with the responsibility of national security.

I think it is a basically wrong and irresponsible stop to take. That is why I insisted on my amendment and I believe that is why it was accepted on the floor by the House managers of the bill. That is why I am deeply disappointed that the conferees rejected it so summarily and why I urge the Members, in the interests of national security, to vote against this conference report so that we can protect the inherent power of the President.

The SPEAKER pro tempore. The time of the gentleman from Virginia has expired.

Mr. McCLORY. Mr. Speaker, I yield 1 additional minute to the gentleman from Virginia.

Mr. Speaker, will the gentleman yield?

Mr. BUTLER. I yield to the gentleman from Illinois.

Mr. McCLORY. Mr. Speaker, I might say that following our action here in the House and following the acceptance of the word "statutory," I had an informal conversation with the Attorney General, who told me that he was very pleased that the House had inserted the word "statutory" in the language of the bill, because he wanted to be sure that the President's constitutional authority was not diluted. I might say that at this very time the Attorney General of the United States is asserting that position in the Humphrey-Troung case, and in his statement to me and in the spy case he is prosecuting, he is asking us not to deny that authority, which is precisely what the Senate wants to do.

And for us to deny that authority—which is precisely what the Senate wants us to do and which is precisely what we are doing if we eliminate the word "statutory"—is to go against the Attorney General and against the position he has taken and is a position entirely inconsistent with the position agreed upon in this body when we passed the bill.

I thank the gentleman.

Mr. BUTLER. I thank the gentleman.

As a matter of fact, the Attorney General of the United States essentially took the some position when he was a judge of the fifth circuit, as the gentleman may know.

Mr. MURPHY of Illinois. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania (Mr. ERTEL).

Mr. McCLORY. Mr. Speaker, I yield one and a half minutes to the gentleman from Pennsylvania (Mr. ERTEL).

(Mr. ERTEL asked and was given permission to revise and extend his remarks.)

Mr. ERTEL. Mr. Speaker, I thank the gentlemen.

Mr. Speaker, I rise in opposition to the conference report and I do it advisedly because of the action of the conference committee in rejecting the amendment which was accepted by this body by a better than 2-to-1 margin here in a recorded vote. By 224 to 103 the House eliminated a special court requirement under this bill. Subsequently in the conference committee there was a proposal to try to diversify the court by allowing the 11 circuit chief judges to name district judges within their circuits to sit and approve warrants under this bill. This would give us geographic dispersion of the court. Certainly it would not interfere with the actual operation of the district courts throughout the Nation and would not set up a special court here in the District of Columbia. A special court here in Washington if penetrated by a foreign agency would expose our entire national intelligence operations. In addition by diversification of the court, we would not have judge shopping and we would not have the security risk of concentrating all our eggs in one basket. Furthermore it would not disrupt the normal court functions.

The House Intelligence Committee would not accept that provision although it appeared to me that the Senate, if I can recall exactly what Senator KENNEDY said, stated that it did not sound like an unreasonable proposal. Unfortunately the House conferees would not approve it. The objection was raised at one point that the proposal was subject to a point of order, but we cleared that up through the House Parliamentarian and the proposal was in order. However the House conferees rejected it and as a consequence, we came back today with a provision more onerous than in the House bill.

We now have a court consisting of seven men selected by the Chief Justice of the United States who is appointed for life. He does not get removed as does a circuit court chief judge who has to relinquish his position when he reaches the age of 70.

So in fact one Chief Justice of the United States selects the seven men who will sit on this court and he can, in fact, influence the foreign intelligence operation of this Nation throughout his lifetime, whether the Chief Justice be an Abe Fortas or a Warren Burger. He can appoint people who have his predisposition and we in this Nation will be encumbered with that predisposition throughout the Chief Justice's lifetime.

I think it is wrong. I think it is wrong also to consider that we will be selecting a judge possibly from California and telling him he has to come to Washington, D.C., and we do not know for how long he will have to stay and we do not know how long we will disrupt his court in California or his judicial position there. But he will have to come to Washington, D.C., and consider these wiretap cases regardless of the inconvenience. We may have to bring in a judge from Florida. It might be the very sad day for the judge to accept that assignment to the District of Columbia for an extended period. Do you think that is conducive to good government?

I think we have created a court which is inoperable. I would ask my colleagues to vote against the conference report and send it back, so it can be reconsidered.

Mr. McCLORY. Mr. Speaker, I yield 1 minute to gentleman from Texas (Mr. ECKHARDT).

Mr. MURPHY of Illinois. Mr. Speaker, I yield 2 minutes to the distinguished majority leader, the gentleman from Texas (Mr. WRIGHT).

(Mr. WRIGHT asked and was given permission to revise and extend his remarks.)

Mr. WRIGHT. Mr. Speaker, I rise in support of the conference report on S. 1566.

As I stated when the bill passed the House in September, "Rarely in the years that I have spent in the Congress have I seen a bill which has brought together often disparate thoughts into one well crafted piece of legislation supported by practically all of the thinking elements of our society."

At that time, I noted who was urging that this bill pass. I mentioned President Carter, President Ford, civil liberties groups, and the chairmen of the Intelligence Committee, the Judiciary Committee, the Appropriations Committee, the Armed Services Committee, and the Budget Committee. I also mentioned the Directors of the Central Intelligence Agency, the National Security Agency, and the FBI.

That was on September 7. Since then we have had a conference with the Senate. The conference report is before you now. It is essentially the same bill that passed the House on September 7 and it is just as strongly supported by all of these distinguished people.

This bill represents a watershed in the history of relations between the Congress and the intelligence community. It has been nurtured through the legislative process with the active cooperation of—not in despite of—the intelligence agencies.

For the first time legislation will provide a stamp of legitimacy for some of our most important intelligence activities. Also, for the first time, legislation will assure our people that these activities are being conducted in a manner consistent with their basic rights. It is for these reasons that the intelligence agencies have asked for this bill, and why I urge you to clear this conference report and send it to the President.

We can no longer afford to let this Nation's intelligence efforts remain adrift in a sea of legal confusion and uncertainty. We can no longer afford to let our intelligence agents remain suspend on this thread of doubt. And we can no longer let the rights of our people depend on the ad hoc resolution of this confusion, uncertainty, and doubt.

The House should act now, and pass this bill.

Mr. McCLORY. Mr. Speaker, I yield myself the remainder of my time.

(Mr. McCLORY asked and was given permission to revise and extend his remarks.)

Mr. McCLORY. Mr. Speaker, this legislation has indeed brought together all of the 2,400 former intelligence officers, all of those who know the intelligence business best, and they are all in opposition to this legislation and to the conference report. I am referring to Gen. Richard Stillwell, who is the head of that organization. I am also talking about Ray Cline, who has a distinguished record as a former deputy head of the CIA, I am talking about William Colby, the former Director of the CIA, who favors limiting the judicial warrant requirement to U.S. persons. All of those who know the intelligence business best, are against this legislation. They recognize the great danger to the entire intelligence

community and to our national security through the enactment of this legislation.

So, Mr. Speaker, I implore the Members to reject this conference report, to vote no. Then in the next Congress when we have an opportunity to establish charter legislation for the CIA and the other intelligence agencies, we can translate the existing guidelines covering foreign intelligence electronic surveillance into statutory form—and include that subject in the charter legislation.

Mr. Speaker, I hope the House will reject the conference report.

Mr. MURPHY of Illinois. Mr. Speaker, may I inquire how much time I have remaining?

The SPEAKER pro tempore. The gentleman from Illinois has 3 minutes remaining.

Mr. MURPHY of Illinois. Mr. Speaker, I yield myself the balance of my time.

In summing up, Mr. Speaker, let me say that there are former Army officers who still think that the cavalry is the only way to fight a war. There are some former naval officers who still think the battleship and the cruiser are the way to fight a war. But today intelligence gathering is conducted in a very scientific manner. As the gentleman from Illinois (Mr. McCLORY) knows quite well, it is a very scientific operation.

The officers who are in charge of the operation of this scientific technology and intelligence gathering, such as Adm. Stansfield Turner, head of the CIA, and I just read his letter a few minutes ago, want this bill. They include in their number Admiral Inman, the head of the National Security Agency that is most involved in the scientific aspects of our our intelligence-gathering efforts.

He wants this bill and wants it in the form as adopted by the Senate and the House conferees. The Director of the FBI, Judge Webster, who is in charge of our counterintelligence efforts—in other words, policing the activities of foreign spies on our shores—wants this legislation.

Therefore, to say that the former intelligence officers do not favor this legislation is like talking about antiquity. This is a new field of intelligence we are talking about today, and the gentleman who have the responsibility to operate in it all want S. 1566.

Mr. BOLAND. Mr. Speaker, will the gentleman yield?

Mr. MURPHY of Illinois. I yield to the gentleman from Massachusetts.

Mr. BOLAND. Mr. Speaker, is it not a fact that those who are really in the collection business, who are now doing the collection of intelligence for all the agencies which the gentleman from Illinois describes, are the people who really want this bill? Do they not want it so they can be protected from court suits which are now developing in many areas across this land?

The gentleman from Illinois (Mr. McCLORY) makes the point that there are some 2,400 retired intelligence officers who do not want it. I am talking about the officers who are now presently on the payroll. They want it. They are the ones we ought to be concerned about.

Mr. Speaker, let me quote from a letter of yesterday from the President of the United States. It reads as follows:

This legislation has been carefully developed over several years by Executive and Congressional leaders of both parties to protect both the strength of our Nation's intelligence agencies and the privacy rights of our citizens.

Mr. Speaker, that is the whole thrust of this proposal, the whole thrust of this legislation.

Mr. Speaker, I hope the Members of this House will accept the conference report.

Mr. MURPHY of Illinois. Mr. Speaker, I thank the gentleman from Massachusetts (Mr. BOLAND).

The SPEAKER pro tempore. Without objection, the previous question is ordered on the conference report.

There was no objection.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. McCLORY. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 226, nays 176, not voting 28, as follows:

[Roll No. 897]

YEAS—226

Addabbo	Dent	Jones, N.C.
Akaka	Derrick	Jones, Okla.
Ambro	Dicks	Jones, Tenn.
Anderson, Calif.	Dingell	Jordan
Anderson, Ill.	Dodd	Kastenmeier
Annunzio	Downey	Keys
Applegate	Duncan, Oreg.	Kildee
Ashley	Early	Kostmayer
Aspin	Edgar	Krebs
AuCoin	Edwards, Calif.	LaFalce
Baldus	Ellberg	Le Fante
Barnard	Evans, Colo.	Lederer
Baucus	Evans, Ga.	Leggett
Beard, R.I.	Evans, Ind.	Lehman
Bedell	Fary	Long, La.
Beilenson	Fascell	Long, Md.
Benjamin	Fenwick	Lundine
Biaggi	Findley	McCloskey
Bingham	Fisher	McFall
Blanchard	Fithian	McHugh
Blouin	Flood	McKay
Boland	Florio	McKinney
Boiling	Flynt	Maguire
Bonior	Ford, Mich.	Mahon
Bonker	Ford, Tenn.	Mann
Bowen	Fowler	Markey
Brademas	Fraser	Marks
Brinkley	Garcia	Marlenee
Brodhead	Gaydos	Mathis
Brooks	Giaimo	Mattox
Brown, Calif.	Gibbons	Mazzoli
Burke, Mass.	Ginn	Meeds
Burlison, Mo.	Glickman	Meyner
Burton, John	Gore	Mikulski
Burton, Phillip	Green	Mikva
Caputo	Hamilton	Mineta
Carney	Hanley	Minish
Carr	Hannaford	Mitchell, Md.
Cavanaugh	Harkin	Moakley
Chisholm	Harris	Moffett
Clay	Hawkins	Montgomery
Collins, Ill.	Heckler	Moorhead, Pa.
Conte	Hefner	Mottl
Corman	Heftel	Murphy, Ill.
Cornell	Holland	Murphy, Pa.
Cornwell	Howard	Murtha
Cotter	Hubbard	Myers, Michael
D'Amours	Hughes	Natcher
Danielson	Ireland	Neal
Delaney	Jacobs	Nix
Dellums	Johnson, Calif.	Nolan
	Johnson, Colo.	Nowak
Oberstar	Rooney	Traxler
Obey	Rose	Tsongas
Ottinger	Rosenthal	Tucker
Panetta	Rostenkowski	Udall
Patterson	Roybal	Ullman
Pattison	Russo	Van Deerlin
Pease	Santini	Vanik
Pepper	Scheuer	Vento
Perkins	Seiberling	Walgren
Pickle	Sharp	Waxman
Pike	Simon	Weaver
Preyer	Sisk	Weiss
Price	Skelton	Whalen
Pritchard	Smith, Iowa	Whitley
Pursell	Solarz	Whitten
Quayle	Spellman	Wilson, Tex.
Railsback	St Germain	Wirth
Rangel	Staggers	Wright
Reuss	Steed	Yates
Richmond	Steers	Yatron
Rodino	Stokes	Young, Tex.
Roe	Studds	Zablocki
Rogers	Thompson	Zeferetti
Roncalio	Thornton	

NAYS—176

Abdnor	Frenzel	Murphy, N.Y.
Andrews, N.C.	Frey	Myers, Gary
Andrews, N. Dak.	Fuqua	Myers, John
Archer	Gammage	Nedzi
Armstrong	Gephardt	Nichols
Ashbrook	Gilman	O'Brien
Bafalis	Goldwater	Oakar
Bauman	Goodling	Patten
Beard, Tenn.	Gradison	Poage
Bennett	Grassley	Pressler
Bevill	Gudger	Quillen
Boggs	Guyer	Regula
Breaux	Hagedorn	Rhodes
Breckinridge	Hall	Rinaldo
Broomfield	Hammer-schmidt	Roberts
Brown, Mich.	Hansen	Robinson
Brown, Ohio	Harsha	Rousselot
Broyhill	Hightower	Runnels
Buchanan	Holt	Ruppe
Burgener	Holtzman	Ryan
Burke, Fla.	Horton	Satterfield
Burleson, Tex.	Huckaby	Sawyer
Butler	Hyde	Schroeder
Carter	Ichord	Schulze
Cederberg	Jeffords	Sebelius
Clausen, Don H.	Jenkins	Shuster
Clawson, Del	Jenrette	Sikes
Cleveland	Kasten	Slack
Cohen	Kazen	Smith, Nebr.
Coleman	Kelly	Snyder
Collins, Tex.	Kemp	Spence
Conable	Kindness	Stangeland
Corcoran	Lagomarsino	Stanton
Coughlin	Latta	Stark
Cunningham	Leach	Steiger
Daniel, Dan	Lent	Stockman
Daniel, R. W.	Levitas	Stump
Davis	Livingston	Symms
de la Garza	Lloyd, Calif.	Taylor
Derwinski	Lloyd, Tenn.	Thone
Devine	Lott	Treen
Dickinson	Lujan	Trible
Dornan	Luken	Vander Jagt
Drinan	McClory	Volkmer
Duncan, Tenn.	McCormack	Waggonner
Eckhardt	McDade	Walker
Edwards, Ala.	McDonald	Walsh
Edwards, Okla.	McEwen	Wampler
Emery	Madigan	Watkins
English	Marriott	Whitehurst
Erlenborn	Martin	Wiggins
Ertel	Michel	Wilson, Bob
Evans, Del.	Milford	Winn
Fish	Miller, Ohio	Wolff
Flippo	Mitchell, N.Y.	Wydler
Flowers	Mollohan	Wylie
Foley	Moore	Young, Alaska
Forsythe	Moorhead, Calif.	Young, Fla.
Fountain		Young, Mo.

NOT VOTING—28

Alexander	Harrington	Rudd
Ammerman	Hillis	Sarasin
Badham	Hollenbeck	Shipley
Burke, Calif.	Krueger	Skubitz
Chappell	Miller, Calif.	Stratton
Cochran	Moss	Teague
Conyers	Pettis	White
Crane	Quie	Wilson, C. H.
Diggs	Rahall	
Gonzalez	Risenhoover	

The Clerk announced the following pairs:

On this vote:

Mr. White for, with Mr. Stratton against.
Mr. Krueger for, with Mr. Chappell against.
Mrs. Burke of California for, with Mr. Crane against.
Mr. Rahall for, with Mr. Skubitz against.
Mr. Ammerman for, with Mr. Rudd against.

Until further notice:

Mr. Alexander with Mr. Badham.
Mr. Shipley with Mr. Cochran of Mississippi.
Mr. Teague with Mr. Hillis.
Mr. Charles H. Wilson of California with Mr. Hollenbeck.
Mr. Gonzalez with Mr. Quie.
Mr. Conyers with Mr. Sarasin.
Mr. Miller of California with Mr. Harrington.
Mr. Moss with Mr. Diggs.
Mr. Risenhoover with Mrs. Pettis.

Messrs. FLIPPO, LENT, SEBELIUS, McDADE, FOLEY, and STARK changed their vote from "yea" to "nay."

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report on the Senate bill S. 1566, just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

CONFERENCE REPORT ON H.R. 5263, ENERGY PRODUCTION AND CONSERVATION TAX INCENTIVE ACT

Mr. ULLMAN submitted the following conference report and statement on the bill (H.R. 5263) to suspend until the close of June 30, 1980, the duty on certain bicycle parts:

CONFERENCE REPORT (H. REPT. No. 95-1773)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5263) to suspend until the close of June 30, 1980, the duty on certain bicycle parts, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the "Energy Tax Act of 1978".

(b) AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

(c) TABLE OF CONTENTS.—

Sec. 1. Short title; etc.
TITLE I—RESIDENTIAL ENERGY CREDIT
Sec. 101. Residential energy credit.
TITLE II—TRANSPORTATION
PART I—GAS GUZZLER TAX
Sec. 201. Gas guzzler tax.
PART II—MOTOR FUELS
Sec. 221. Exemption from motor fuels excise taxes for certain alcohol fuels.
Sec. 222. Denial of credit or refund for nonbusiness nonhighway use of gasoline, special motor fuels, and lubricating oil.
PART III—PROVISIONS RELATED TO BUSES
Sec. 231. Removal of excise tax on buses.
Sec. 232. Removal of excise tax on bus parts.
Sec. 233. Removal of excise tax on fuel, oil, and tires used in connection with intercity, local, and school buses.
PART IV—INCENTIVES FOR VAN POOLING
Sec. 241. Full investment credit for certain commuter vehicles.
Sec. 242. Exclusion from gross income of value of qualified transportation provided by employer.
TITLE III—CHANGES IN BUSINESS INVESTMENT CREDIT TO ENCOURAGE CONSERVATION OF, OR CONVERSION FROM, OIL AND GAS OR TO ENCOURAGE NEW ENERGY TECHNOLOGY
Sec. 301. Changes in business investment credit.
TITLE IV—MISCELLANEOUS PROVISIONS
Sec. 401. Treatment of intangible drilling costs for purposes of the minimum tax.
Sec. 402. Option to deduct intangible drilling costs in the case of geothermal deposits.
Sec. 403. Depletion for geothermal deposits and natural gas from geopressurized brine.
Sec. 404. Rerefined lubricating oil.

TITLE I—RESIDENTIAL ENERGY CREDIT

SEC. 101. RESIDENTIAL ENERGY CREDIT.

(a) GENERAL RULE.—Subpart A of part IV of subchapter A of chapter 1 (relating to credits allowable) is amended by inserting after section 44B the following new section:

"SEC. 44C. RESIDENTIAL ENERGY CREDIT.

"(a) GENERAL RULE.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

"(1) the qualified energy conservation expenditures, plus

"(2) the qualified renewable energy source expenditures.

"(b) QUALIFIED EXPENDITURES.—For purposes of subsection (a)—

"(1) ENERGY CONSERVATION.—In the case of any dwelling unit, the qualified energy conservation expenditures are 15 percent of so much of the energy conservation expenditures made by the taxpayer during the taxable year with respect to such unit as does not exceed $2,000.

"(2) RENEWABLE ENERGY SOURCE.—In the case of any dwelling unit, the qualified renewable energy source expenditures are the following percentages of the renewable energy source expenditures made by the taxpayer during the taxable year with respect to such unit:

"(A) 30 percent of so much of such expenditures as does not exceed $2,000, plus

"(B) 20 percent of so much of such expenditures as exceeds $2,000 but does not exceed $10,000.

"(39) PRIOR EXPENDITURES BY TAXPAYER ON SAME RESIDENCE TAKEN INTO ACCOUNT.—If for any prior year a credit was allowed to the taxpayer under this section with respect to any dwelling unit by reason of energy conservation expenditures or renewable energy source expenditures, paragraph (1) or (2) (whichever is appropriate) shall be applied for the taxable year with respect to such dwelling unit by reducing each dollar amount contained in such paragraph by the prior year expenditures taken into account under such paragraph.

"(4) MINIMUM DOLLAR AMOUNT.—No credit shall be allowed under this section with respect to any return for any taxable year if the amount which would (but for this paragraph) be allowable with respect to such return is less than $10.

"(5) APPLICATION WITH OTHER CREDITS.—The credit allowed by subsection (a) shall not exceed the tax imposed by this chapter for the taxable year, reduced by the sum of the credits allowable under a section of this subpart having a lower number or letter designation than this section, other than credits allowable by sections 31, 39, and 43.

"(6) CARRYOVER OF UNUSED CREDIT.—

"(A) IN GENERAL.—If the credit allowable under subsection (a) for any taxable year exceeds the limitation imposed by paragraph (5) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

"(B) NO CARRYOVER TO TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1987.—No amount may be carried under subparagraph (A) to any taxable year beginning after December 31, 1987.

"(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) ENERGY CONSERVATION EXPENDITURES.—The term 'energy conservation expenditure' means an expenditure made on or after April 20, 1977, by the taxpayer for insulation or any other energy-conserving component (or for the original installation of such insulation or other component) installed in or on a dwelling unit—

"(A) which is located in the United States,

"(B) which is used by the taxpayer as his principal residence, and

"(C) the construction of which was substantially completed before April 20, 1977.

"(2) RENEWABLE ENERGY SOURCE EXPENDITURE.—

"(A) IN GENERAL.—The term 'renewable energy source expenditure' means an expenditure made on or after April 20, 1977, by the taxpayer for renewable energy source property installed in connection with a dwelling unit—

"(i) which is located in the United States, and

"(ii) which is used by the taxpayer as his principal residence.

"(B) CERTAIN LABOR COSTS INCLUDED.—The term 'renewable energy source expenditure' includes expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of renewable energy source property.

"(C) SWIMMING POOL, ETC., USED AS STORAGE MEDIUM.—The term 'renewable energy source expenditure' does not include any expenditure properly allocable to a swimming pool used as an energy storage medium or to any other energy storage medium which has a primary function other than the function of such storage.

"(3) INSULATION.—The term 'insulation' means any item—

"(A) which is specifically and primarily designed to reduce when installed in or on a dwelling (or water heater) the heat loss or gain of such dwelling (or water heater),

"(B) the original use of which begins with the taxpayer,

"(C) which can reasonably be expected to remain in operation for at least 3 years, and

"(D) which meets the performance and quality standards (if any) which—

"(i) have been prescribed by the Secretary by regulations, and

"(ii) are in effect at the time of the acquisition of the item.

"(4) OTHER ENERGY-CONSERVING COMPONENT.—The term 'other energy-conserving component' means any item (other than insulation)—

"(A) which is—

"(i) a furance replacement burner designed to achieve a reduction in the amount of fuel consumed as a result of increased combustion efficiency,

"(ii) a device for modifying flue openings designed to increase the efficiency of operation of the heating system,

"(iii) an electrical or mechanical furnace ignition system which replaces a gas pilot light,

"(iv) a storm or thermal window or door for the exterior of the dwelling,

"(v) an automatic energy-saving setback thermostat,

"(vi) caulking or weatherstripping of an exterior door or window,

"(vii) a meter which displays the cost of energy usage, or

"(viii) an item of the kind which the Secretary specifies by regulations as increasing the energy efficiency of the dwelling,

"(B) the original use of which begins with the taxpayer,

"(C) which can reasonably be expected to remain in operation for at least 3 years, and

"(D) which meets the performance and quality standards (if any) which—

"(i) have been prescribed by the Secretary by regulations, and

"(ii) are in effect at the time of the acqisition of the item.

"(5) RENEWABLE ENERGY SOURCE PROPERTY.—The term 'renewable energy source property' means property—

"(A) which, when installed in connection with a dwelling, transmits or uses—

"(i) solar energy, energy derived from geothermal deposits (as defined in section 613(e)(3)), or any other form of renewable energy which the Secretary specifies by regulations, for the purpose of heating or cooling such dwelling or providing hot water for use within such dwelling, or

"(ii) wind energy for nonbusiness residential purposes,

"(B) the original use of which begins with the taxpayer,

"(C) which can reasonably be expected to remain in operation for at least 5 years, and

"(D) which meets the performance and quality standards (if any) which—

"(i) have been prescribed by the Secretary by regulations, and

"(ii) are in effect at the time of the acquisition of the property.

"(6) REGULATIONS.—

"(A) CRITERIA; CERTIFICATION PROCEDURES.—The Secretary shall by regulations—

"(i) establish the criteria which are to be used in (I) prescribing performance and quality standards under paragraphs (3), (4), and (5), or (II) specifying any item under paragraph (4)(A)(viii) or any form of renewable energy under paragraph (5)(A)(i), and

"(ii) establish a procedure under which a manufacturer of an item may request the Secretary to certify that the item will be treated, for purposes of this section, as insulation, an energy-conserving component, or renewable energy source property.

"(B) CONSULTATION.—Performance and quality standards regulations and other regulations shall be prescribed by the Secretary under paragraphs (3), (4), and (5) and under this paragraph only after consultation with the Secretary of Energy, the Secretary of Housing and Urban Development, and other appropriate Federal officers.

"(7) WHEN EXPENDITURES MADE; AMOUNT OF EXPENDITURES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), an expenditure with respect to an item shall be treated as made when original installation of the item is completed.

"(B) RENEWABLE ENERGY SOURCE EXPENDITURES.—In the case of renewable energy source expenditures in connection with the construction or reconstruction of a dwelling, such expenditures shall be treated as made when the original use of the constructed or reconstructed dwelling by the taxpayer begins.

"(C) AMOUNT.—The amount of any expenditure shall be the cost thereof.

"(D) ALLOCATION IN CERTAIN CASES.—If less than 80 percent of the use of an item is for nonbusiness residential purposes, only that portion of the expenditures for such item which is properly allocable to use for nonbusiness residential purposes shall be taken into account. For purposes of this subparagraph, use for a swimming pool shall be treated as use which is not for residential purposes.

"(8) PRINCIPAL RESIDENCE.—The determination of whether or not a dwelling unit is a taxpayer's principal residence shall be made under principles similar to those applicable to section 1034, except that—

"(A) no ownership requirement shall be imposed, and

"(B) the period for which a dwelling is treated as the principal residence of the taxpayer shall include the 30-day period ending on the first day on which it would (but for this subparagraph) be treated as his principal residence.

"(d) SPECIAL RULES.—For purposes of this section—

"(1) DOLLAR AMOUNTS IN CASE OF JOINT OCCUPANY.—In the case of any dwelling unit which is jointly occupied and used during any calendar year as a principal residence by 2 or more individuals—

"(A) the amount of the credit allowable under subsection (a) by reason of energy conservation expenditures or by reason of renewable energy source expenditures (as the case may be) made during such calendar year by any of such individuals with respect to such dwelling unit shall be determined by treating all of such individuals as one taxpayer whose taxable year is such calendar year; and

"(B) there shall be allowable with respect to such expenditures to each of such individuals a credit under subsection (a) for the taxable year in which such calendar year ends in an amount which bears the same ratio to the amount determined under subparagraph (A) as the amount of such expenditures made by such individual during such calendar year bears to the aggregate of expenditures made by all of such individuals during such calendar year.

"(2) TENANT-STOCKHOLDER IN COOPERATIVE HOUSING CORPORATION.—In the case of an individual who is a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such individual shall be treated as having made his tenant-stockholder's proportionate share (as defined in section 216(b)(3)) of any expenditures of such corporation.

"(3) CONDOMINIUMS.—

"(A) IN GENERAL.—In the case of an individual who is a member of a condominium management association with respect to a condominium which he owns, such individual shall be treated as having made his proportionate share of any expenditures of such association.

"(B) CONDOMINIUM MANAGEMENT ASSOCIATION.—For purposes of this paragraph, the term 'condominium management association' means an organization which meets the requirements of paragraph (1) of section 528(c) (other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as residences.

"(4) 1977 EXPENDITURES ALLOWED FOR 1978.—

"(A) NO CREDIT FOR TAXABLE YEARS BEGINNING BEFORE 1978.—No credit shall be allowed under this section for any taxable year beginning before January 1, 1978.

"(B) 1977 EXPENDITURES ALLOWED FOR 1978.—In the case of the taxpayer's first taxable year beginning after December 31, 1977, this section shall be applied by taking into account the period beginning April 20, 1977, and ending on the last day of such first taxable year.

"(e) BASIS ADJUSTMENTS.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

"(f) TERMINATION.—This section shall not apply to expenditures made after December 31, 1985."

(b) TECHNICAL AND CLERICAL AMENDMENTS.—

(1) The table of sections for subpart A of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 44B the following new item:

"SEC. 44C. Residential energy credit."

(2) Subsection (c) of section 56 (defining regular tax deduction) is amended by striking out "credits allowable under—" and all that follows and inserting in lieu thereof "credits allowable under subpart A of part IV other than under sections 31, 39, and 43."

(3) Subsection (a) of section 1016 (relating to adjustments to basis) is amended by inserting after paragraph (20) the following new paragraph:

"(21) to the extent provided in section 44C(e), in the case of property with respect to which a credit has been allowed under section 44C;".

(4) Subsection (b) of section 6096 (relating to designation of income tax payment to Presidential Election Campaign Fund) is amended by striking out "and 44B" and inserting in lieu thereof "44B, and 44C".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending on or after April 20, 1977.

TITLE II—TRANSPORTATION

PART 1—GAS GUZZLER TAX

SEC. 201. GAS GUZZLER TAX.

(a) GENERAL RULE.—Part I of subchapter A of chapter 32 (relating to motor vehicle excise taxes) is amended by adding at the end thereof the following new section:

"SEC. 4064. GAS GUZZLER TAX.

"(a) IMPOSITION OF TAX.—There is hereby imposed on the sale by the manufacturer of each automobile a tax determined in accordance with the following tables:

"(1) In the case of a 1980 model year automobile:

"If the fuel economy of the model type in which the automobile this fall is:	The tax is:
At least 15	0
At least 14 but less than 15	$200
At least 13 but less than 14	300
Less than 13	550

"(2) In the case of a 1981 model year automobile:

"If the fuel economy of the model type in which the automobile this fall is:	The tax is:
At least 17	0
At least 16 but less than 17	$200
At least 15 but less than 16	350
At least 14 but less than 15	450
At least 13 but less than 14	550
Less than 13	650